Department of Law Monthly Report
January, 2009

Generally Speaking

COMINGS and GOINGS

Please welcome **AAG Susan West** to the Anchorage Torts and Workers' Compensation Section. AAG West, who started with the section on January 12, has many years of tort defense experience in private practice in Alaska.

Also joining the Anchorage staff is **Sondra Zimmer, Administrative Clerk II**, Human Services/Child Protection Sections, and **Robin Munnlyn, Administrative Clerk III**, Collections & Support Section.

The Anchorage DAO welcomed **ADA Jonas Walker**. He will be working in the misdemeanor unit.

IN THIS ISSUE

Anchorage Human Services Section **Paralegal Kathey Virgin** gave notice she will be leaving to work for the federal government as a paralegal.

The Anchorage Torts and Workers' Compensation Section said farewell to **AAG Paula Jacobson** upon her retirement from state service.

The Labor and State Affairs Section bid sad good-byes to Anchorage **AAG Larry McKinstry** and Juneau **LOA I Kendra Kloster** who left state service for new opportunities.

The Kenai DAO reports the new additions to their offices, **ADA Amy Fenske** and **Administrative Clerk Stephanie Barnes,** are up and running and doing a superb job.

CIVIL DIVISION

Child Protection

New CINA cases based upon allegations in the Office of Children's Services (OCS) petitions:

OCS assumed emergency custody of three children after the youngest child, a two-month-old, presented at an area hospital with extensive bruising to his face and body. The parent's explanations for the bruising do not explain the injuries. The other children reported domestic violence and substance abuse in the home.

Police responded to a report of domestic violence. Upon investigation, they found intoxicated parents involved in physical altercations while their young daughter was present. One of the parents was brandishing a knife and the other had bruises. The father was arrested and both parents were cited for child abuse and neglect. OCS assumed emergency custody.

OCS had been providing service to a family since 2006 to address issues of domestic violence and substance abuse. Several recommendations were

made, including in-patient drug treatment and mental health counseling. The parents have failed to follow the recommendations and conditions in the home continue to deteriorate. OCS is asking that the court remove the children.

OCS assumed emergency custody of five children after several disclosed that their father was sexually abusing them and had been doing so for some time. The mother's whereabouts are unknown. Upon further investigation, it was revealed that the father also neglected the children's medical and educational needs. There are additional concerns of substance abuse.

Numerous other children across the state were taken into custody as a result of serious risk of harm due to their parents' substance abuse, domestic violence or incarceration.

Commercial and Fair Business

Consumer Protection Settlements Benefit Alaska

Mattel Settlement

The Attorney General, along with 38 other state attorneys general, entered into a settlement agreement with Mattel, Inc. and its subsidiary, Fisher-Price, Inc., resolving a 16-month investigation into the events that resulted in a voluntary recall of the companies' toys for excessive lead paint during 2007. The agreement, filed in Anchorage Superior Court, requires Mattel to phase in the recently adopted more stringent federal lead paint standards ahead of the timelines provided in the Consumer Product Safety Improvement Act; provides the states with enforcement authority for those standards; and requires Mattel to make a $12 million payment to the states.

Dell Settlement

The state reached a settlement with Dell Inc. and Dell Financial Services to address concerns about financing promotions, technical support and repair policies, and rebate offers. The settlement will provide $25,000 in restitution for Alaskan consumers harmed by these practices. Similar agreements were reached by 30 other states as part of a multi-state investigation led by Washington and Connecticut. The investigation followed consumer complaints in many states about Dell's practices. Many consumers reported being charged high interest rates for financing even though they had applied for what Dell advertised as zero-interest financing. Other complaints involved trouble obtaining warranty service on Dell computers or never receiving promised rebates. Alaskans have until April 13 to file refund claims; the claim form and instructions are available at:

www.law.alaska.gov/pdf/press/011209-FORM_DellClaim.pdf

Airborne Settlement

Alaska and 31 other states reached a settlement with the makers of Airborne, a dietary supplement promoted for cold and flu prevention. The complaint filed in the case alleges that the defendants explicitly and implicitly claimed to sell a cold prevention remedy, a sore throat remedy, a germ fighter, and an allergy remedy without adequate substantiation to prove that the products could perform as advertised. It also alleges that the defendants failed to adequately warn consumers about potential health risks to select populations, including pregnant women, under old formulations of Airborne that contained 5,000 International Units of Vitamin A per dose. Currently, the level of Vitamin A in Airborne is 2,000 International Units.

Under the consent judgment, the defendants are prohibited from saying "take at the first sign of a cold symptom" and making other claims that imply that Airborne can prevent, treat, or cure colds, coughs, the flu, upper respiratory infections, or allergies. By law, advertisements for dietary supplements like Airborne cannot include such drug claims – even if the claims are substantiated – unless the FDA has approved the supplements

as drugs. Airborne will also have to pay $7 million to the states. This is the largest payment to date in a multi-state settlement with a dietary supplement producer. Alaska's share of the settlement is $150,000.

Division of Insurance Settles Action Against Title Insurance Producer

In a matter involving title insurance producer Alyeska Title Guaranty Agency, Inc., AAG Daniel Wilkerson, working with the Office of Special Prosecutions and Appeals, assisted in negotiating one of the largest civil penalties ever paid to the State of Alaska by an insurance producer. Alyeska Title agreed to pay a net civil penalty of $150,000 ($400,000 with $250,000 suspended) to settle violations of the insurance code based on its failure to maintain proper records. In the agreement, Alyeska Title admits that it violated several provisions of the insurance code that required Alyeska Title to (1) document each action taken in regard to an insurance transaction including documentation that identifies dates of events, persons participating in the events and premiums, fees, commissions, or other compensation received in a transaction; (2) keep a complete record of its transactions at its place of business; (3) retain the records of a particular transaction for five years after the transaction is completed; (4) maintain at its place of business current accounting and financial records maintained under generally accepted accounting principles; and (5) maintain books of accounts and records and vouchers pertaining to title insurance in a manner that the director can readily ascertain whether the licensee has complied with statutory provisions governing title insurance. These violations were discovered by Division of Insurance investigators while investigating possible criminal misconduct of a former Alyeska Title employee in a title insurance transaction that resulted in loss to an Alyeska Title client. In addition to paying the penalty, Alyeska Title agreed to pay its client $160,000 as restitution and to comply with a business rehabilitation plan, monitored by the Division of Insurance, to ensure no such violations occur in the future. Alyeska Title's future compliance is enforced by the suspended penalty of $250,000, which will be in effect for four years.

Administrative Action in Professional Licensing Matters

A state-licensed marine pilot, Joseph Homer, voluntarily surrendered his license after the filing of an accusation seeking revocation of the license for violating a board order prohibiting him from consuming alcoholic beverages. The violation was based on a DWI charge filed against him in Ketchikan. AAG Gayle Horetski handled the case.

On January 23, the Board of Nursing voted to accept an administrative law judge's proposed decision and denied Thomas Herwick's application for reinstatement of his registered nurse license. Mr. Herwick voluntarily surrendered his license in 2005 while he was under investigation by the division for allegedly hastening the death of a terminally ill cancer patient by administering drastically increased doses of morphine (prescribed for pain control) and by removing the patient's oxygen mask without a physician's order. He was fired from his hospital job for this conduct. The administrative law judge determined that Mr. Herwick had not proven that he is competent to resume the practice of nursing with skill and safety. AAG Gayle Horetski handled the case.

Division of Investments Files for Relief from Stay in First Chapter 12 Bankruptcy

Michael and Sherrie Sine filed the first fisherman Chapter 12 bankruptcy in March of 2008. In December their amended plan finally came on for a hearing despite objections filed by the Division of Investments and the Chapter 12 trustee. The main thrust of the objections was that the plan was not feasible and the debtors had failed to show how they would be able to comply with the terms of the plan. In January 2009 Judge MacDonald refused to confirm their plan because it was not feasible. Since filing in March of

2008, the Sines have made no payments to the trustee and in December, when their first payment was due, they advised the court they had failed to earn enough from fishing to make the payments. Now the Sines are proposing to file an amended Chapter 12 plan that would strip the state's loan on the vessel. They contend that doing so will enable them to earn enough to make the revised payments to the state. The state has decided to file for relief from stay to begin repossession of the permit and vessel.

Superior Court Affirms Denial of PFD

Joseph Wetzler filed an appeal in the Anchorage Superior Court challenging the Department of Revenue's decision denying him a 2006 permanent fund dividend. The department determined that Mr. Wetzler did not qualify for a post-secondary education allowable absence because he did not attend an accredited educational institution as required by regulation. Mr. Wetzler argued this regulation exceeded the department's statutory authority to adopt. Ruling from the bench after oral argument, Judge Gleason affirmed the Department of Revenue's denial of the dividend. AAG Michele Kane handled the appeal and oral argument.

Environmental

Settlement of Litigation Involving "Lands Unsuitable for Coal Mining" Petition

The Department of Natural Resources (DNR) and the group "No-COALition," represented by Trustees for Alaska, have settled a lawsuit No-COALition brought after DNR denied its petition for a determination that nearly 96,000 acres of land southwest of Anchorage was unsuitable for coal mining. Commissioner Irwin denied the petition on three grounds: (1) the petition lacked evidence tending to support the claims; (2) the petition was meritless; and (3) several thousand acres of land known as the "Chuitna Coal Project" are within the 96,000-acre petitioned area and are exempt from the petition process because of a permitting process completed in the late 1980s. The settlement resulted in dismissal of the litigation and let stand the commissioner's decisions that the petition lacked evidence tending to support the claims and that the petition was meritless. But the commissioner agreed not to exempt the Chuitna Coal Project lands, in a future petition process, on the specific basis of the 1980s permitting process. A third party, PacRim, which holds the lease for the Chuitna Coal Project lands for potential coal development, did not join the settlement. The court's dismissal order provides that PacRim preserved its rights to refute claims by No-COALition or others who might file petitions with DNR in the future. Senior AAG Ruth Hamilton Heese represented DNR in the administrative and court proceedings on the petition.

Talbot's v. State, et al. AAG Lindsay Wolter requested oral argument before the Alaska Supreme Court in this case. The state issued a consistency determination under the Alaska Coastal Management Program to Survey Point Holdings, Inc. for a cruise ship berth in Ketchikan. Talbot's, a neighboring landowner to the proposed berth project, sued to enjoin the state from finalizing and issuing the consistency determination. Talbot's claims that the state failed to adhere to city, borough, and state regulations. The superior court ultimately denied Talbot's request for an injunction, and, after a lively motion practice, dismissed the state and borough from the case. The state obtained a judgment from the trial court for attorneys' fees and costs. Talbot's appealed and briefing just concluded.

Southeast Alaska Conservation Council Appeal Argued

The U.S. Supreme Court heard oral argument in the Kensington Mine appeal on January 12. Counsel for the federal government and for Coeur Alaska argued for reversal of the adverse Ninth Circuit Court of Appeals decision, while counsel for the Southeast Alaska Conservation Council

defended it. The state did not argue, but was represented by Attorney General Colberg, AAG Cam Leonard, contract counsel from a D.C. law firm, and three representatives from the Department of Natural Resources. The Court was very active and probing in its questions of all counsel. A decision is expected sometime between March and the end of June.

New York, et al. v. EPA. The State of Alaska joined New York, Nevada, Ohio, and Oklahoma in a petition for review to the United States Court of Appeals for the Second Circuit against the Environmental Protection Agency's final agency action adopting the National Pollutant Discharge Elimination System's permit fee incentive rule. The state also joined the same states and Iowa in a complaint in the U.S. District Court of the Southern District of New York concerning the same agency action. AAG Michele Kane is handling this matter.

National Pollutant Discharge Elimination Program Approval

In October 2008 the Environmental Protection Agency (EPA) approved Alaska's application to administer a state permit program in lieu of the federal National Pollutant Discharge Elimination System (NPDES) program. This approval was the result of several years of effort by the Department of Environmental Conservation, assisted by the Department of Law. A few weeks later, several Native tribes and environmental groups petitioned the Ninth Circuit Court of Appeals to review EPA's approval, arguing that the state program did not satisfy the applicable federal criteria for program approval. The state has intervened in that proceeding. Briefing will occur during the summer of 2009. In the meantime, EPA's program approval remains in effect, and the Department of Environmental Conservation has already begun its phased assumption of the NPDES permitting. AAG Cam Leonard is handling this matter.

Human Services

Litigation Update

AAG Erin Pohland is preparing for an upcoming hearing in the *Elita S. Muhlenbruch* Medicaid provider audit appeal remand.

AAG Kimberly Allen and Section Chief Stacie Kraly continue to work on resolving the six separate cases related to the Personal Care Program. At this point, the parties have come to a conceptual agreement on all six cases with details being worked out.

Section Chief Kraly received a split decision from the Alaska Supreme Court in *Banner Health v. Jackson*. The court upheld most of the superior court's rulings but remanded the case to the superior court on one issue – whether Alaska Open Imaging would be a physician's office under the Certificate of Need (CON) statutes and therefore exempt from the CON process. The plaintiffs petitioned for rehearing and the state responded. Interestingly, the *Banner Health* decision is being used offensively in a separate administrative proceeding involving Imaging Associates of Providence (IAP). IAP argued that the *Banner Health* decision is dispositive of IAP's proceeding. Section Chief Kraly argued that the decision is instructive but does not render the appeal moot and declare IAP a physician's office. This issue was the subject of a lengthy oral argument. The section is waiting for a decision.

The section is in the final stages of word-smithing the *Curyung* settlement agreement. It should be finalized in the next few weeks.

Medicaid

The Third Party Liability team remains busy with over 900 open cases. Eleven claims were resolved this month for a total of $42,809.20.

Other

AAG Rebecca Polizzotto conducted a two-day training for daycare licensing in Fairbanks.

Labor and State Affairs

Alaska Industrial Development and Export Authority

The Alaska Industrial Development and Export Authority (AIDEA) agreed to sell the Healy Clean Coal Project to Golden Valley Electric Association. Golden Valley will be required to sell half of the Healy Clean Coal Project power to Homer Electric Association, an electric utility company that had been developing the Healy Clean Coal Project with AIDEA. This sale will be part of the settlement of a lawsuit between AIDEA and Golden Valley over the operation of the plant. AAGs Brian Bjorkquist and Mike Mitchell are assigned to this matter.

Employment

Villeflores v. State. On January 14, the Alaska Supreme Court issued a memorandum opinion affirming the superior court's dismissal on summary judgment of a case consolidating Mr. Villeflores's 15 lawsuits. Mr. Villeflores alleged unlawful hiring discrimination in connection with his 15 unsuccessful applications for employment with the Alaska Court System, the Department of Administration, the Department of Labor and Workforce Development, and the Alaska State Commission for Human Rights. In his lawsuits, he alleged age, race, and national origin discrimination in violation of state and federal law. Significantly, the court recognized that an employer's hiring preferences for internal candidates and for candidates with more relevant work experience are legitimate and nondiscriminatory. The court also noted that a plaintiff "must offer something more than unsupported assumptions and speculation in order to prove discrimination". AAG Bill Milks handled this case.

Division of Motor Vehicles

Shawn Woodhead v. State. On January 22, the superior court granted Shawn Woodhead's motion for attorney fees and costs in an administrative appeal on a driver's license revocation. Mr. Woodhead requested a fee award of $5,000. The court awarded him fees of $2,500 and costs of $310. AAG Krista Stearns represented the Division of Motor Vehicles.

Procurement

This month saw the approval of final versions of the lease purchase and construction agreements between the state (Departments of Administration and Corrections) and the Matanuska-Susitna Borough for bonds ($244,285,000) to fund the Goose Creek Correctional Center. The borough issued the bonds. The legislature authorized this lease-purchase agreement and bonding in 2004 (Ch. 160, SLA 2004). AAGs Margie Vandor and Jeff Stark assisted the departments in this transaction.

Special thanks to LOA I Keri Hile and AAGs Toby Steinberger and Rachel Witty for making AAG Larry McKinstry's transition smooth.

Legislation and Regulations

During January the section worked on legislation and administrative order drafting for the Governor's Office. Additionally, the section edited and legally approved for filing the following regulations projects: Board of Social Work Examiners (application and renewal); Big Game Commercial Services Board (forms and time received); State Board of Registration for Architects, Engineers, and Land Surveyors (waivers, site adaptations and field alterations); and Department of Health and Social Services (training of care providers at assisted living homes).

The section also prepared several revisor's memoranda to make technical corrections in the regulations.

Natural Resources

Petticrew v. State, Commercial Fisheries Entry Commission. On January 2, AAG Vanessa Lamantia filed the state's brief in Juneau Superior Court in this appeal of a Commercial Fisheries Entry Commission (CFEC) decision denying the appellant's claim for skipper participation points for the Northern Southeast Inside (NSEI) sablefish longline fishery and denying his application for an entry permit in the fishery. The state argued that Petticrew does not qualify for any skipper participation points because he did not participate in the NSEI fishery during the qualifying years 1982-84 and did not prove the "extraordinary circumstances" that CFEC regulations require to excuse that failure. The state also argued that the CFEC correctly denied Petticrew's application for an entry permit because he failed to claim sufficient points to avoid a final denial.

Kosbruk v. Commercial Fisheries Entry Commission. On December 31, Judge Stowers issued an opinion affirming the CFEC's decision in an appeal brought by the Estate of Ignatius Kosbruk. Kosbruk argued that his due process rights were violated when the CFEC failed to timely grant him an administrative hearing. He also argued that the CFEC erred in not granting him points for investment in a vessel and a seine and in failing to award him points under the special circumstances provision when he could not skipper a vessel due to health problems. Judge Stowers found that Kosbruk's claim that he never received the multiple notices sent to him by mail was not credible and that therefore no due process violation excused his failure to request a hearing for several years. When Kosbruk made a late request for a hearing on additional evidence in 1978, six years passed before CFEC granted that hearing. Although the court held that Kosbruk was entitled to a hearing in 1978, Judge Stowers also ruled that Kosbruk did not show prejudice by the delay, and therefore his due process rights were not violated.

The court affirmed the CFEC's denial of Kosbruk's claim for investment points in a vessel and a seine, as Kosbruk failed to prove that he owned a useable fishing vessel and net as of the qualification date. There was considerable evidence that both the vessel and net had been unusable for many years as of that date.

Kosbruk also failed to prove that extraordinary circumstances prevented him from fishing as a skipper in certain years. During these years, he fished as a crew member. In his testimony at the administrative hearing, he stated that if he could have afforded a vessel, he was well enough to operate as a skipper.

Cross-motions for attorney's fees are pending in this case. Judge Stowers noted that he believed Kosbruk was entitled to an interim-use permit for the period from 1978 through 1984 and was wrongly denied one by the CFEC. The court also stated, however, that this issue was not before the court and even if it had been, there was no remedy. Although the CFEC won on all issues before the court, Kosbruk moved for attorney's fees as a remedy for the denial of the interim-use permit. The state opposed this motion. AAG Tom Lenhart represents CFEC.

Federal Subsistence Program Issues Continue

AAGs Steven Daugherty and Mike Sewright assisted the Department of Fish & Game with developing comments on fisheries proposals under consideration by the Federal Subsistence Board. AAG Daugherty attended the board meeting in Anchorage from January 13 through January 15, which considered the proposals.
The board rejected state proposals to ensure that steelhead fisheries in Southeast Alaska are sustainable but agreed to direct its staff to work with Fish & Game to address the issue before the next Federal Subsistence Board fisheries meeting in two years.

The board deferred action on the state's proposal for a negative customary and traditional use determination on the Juneau road system, leaving

in place, for now, federal subsistence regulations that have not been used but allow rural residents from throughout the state to subsistence fish on the Juneau road system.

For the second time in two years, the board denied, by a 3-3 vote, Ninilchik Traditional Council's request for a customary and traditional use determination granting Ninilchik a priority use of resident species fish like rainbow trout from the upper Kenai River. Ninilchik already has a customary and traditional use priority to take salmon from that area.

The board also deferred action on a proposal from the Eastern Interior Regional Advisory Council to regulate net mesh size in state and federal fisheries on the Yukon River. Fish & Game requested the deferral to allow completion of additional studies and to allow the Alaska Board of Fisheries to address Yukon River fisheries issues in a comprehensive manner in January of 2010.

AAGs Daugherty and Sewright are continuing to assist the Department of Fish & Game with these and other issues related to the Federal Subsistence Program.

New Fisheries Lawsuits Filed

Two new lawsuits challenging fishery regulations were filed in January. AAG Steven Daugherty and Senior AAG Lance Nelson are reviewing both cases and starting work on the state's defense.

Jensen v. Gutierrez et al. In the first case, Herbert Jensen, a drift and seine salmon fisherman from Cordova, filed a complaint in the U.S. District Court. He argues that the Magnuson-Stevens Act preempts state management of salmon fisheries and seeks to subject all state salmon fisheries to federal oversight. He also specifically seeks to eliminate all state personal use fisheries and the Prince William Sound Management and Salmon Enhancement Allocation Plan. Gregory Gabriel, Jr. represents Mr. Jensen

Alaska Fish and Wildlife Conservation Fund and the Chitina Dipnetters Association, Inc. v. State. The second case, filed in the Fairbanks Superior Court, seeks to overturn a 2003 Alaska Board of Fisheries determination that the Chitina dip net fishery does not satisfy the board's criteria for customary and traditional subsistence use. It also seeks to overturn the board's adoption of those criteria, which the board adopted under the state's subsistence law. Michael Kramer represents the plaintiffs.

Polar Bear Cases

There are now six primary cases involving the listing of the polar bear as threatened under the Endangered Species Act (ESA) and the Interim Final Special Rule issued under ESA section 4(d). On December 3, the U. S. Judicial Panel on Multidistrict Litigation ordered current and tag-along cases centralized in the U.S. District Court for the District of Columbia before Judge Emmet Sullivan. The initial scheduling and case management plan to establish briefing dates is set for hearing on February 9. On January 15, the final rule issued by the Department of Interior under ESA section 4(d) became effective. The final rule provided that any incidental take of polar bears resulting from activities occurring outside the current range of polar bears is not a prohibited act under the ESA. Previously, this provision of the special rule applied only outside Alaska.

Ribbon Seals and Beluga Whales

On December 30, the National Marine Fisheries Service announced its 12-month finding that a petition to list the ribbon seal as a threatened or endangered species is not warranted at this time.

On January 12 the state filed a 60-day notice of intent to sue with the Secretary of Commerce to challenge the final rule listing beluga whales found in Cook Inlet as endangered. This notice requests withdrawal of the final rule because the

decision (1) did not adequately consider state and local conservation efforts; (2) failed to provide sufficient written justification under ESA section 4(i) for portions of the rule not consistent with Alaska agencies' comments; (3) failed to properly document that beluga whales in Cook Inlet comprise a distinct population segment; and (4) failed to provide public review and comment on significant studies and documentation used to support the listing.

Oil, Gas, and Mining

The Point Thompson Unit (PTU) legal team has been engaged in extensive and relentless motion practice with the host of law firms representing ExxonMobil and the other companies in the litigation arising from termination of the Point Thomson Unit. In addition, the first week of evidentiary hearing on termination of 31 of the former PTU leases was completed January 16 and the hearing is continued until February.

Opinions, Appeals and Ethics

During the month, AAG Judy Bockmon addressed a variety of informal ethics inquiries by email and phone and worked on a formal advisory opinion for a board ethics supervisor. At the request of the Attorney General, she has been working with the chair of the Personnel Board on procedures for referring complaints filed against the Governor and Lieutenant Governor to ensure consistency and prompt notice. She also had an informal ethics training session with new staff in the Lieutenant Governor's Office.

The section has several ongoing ethics investigations. In addition, Paralegal Kamie Willis collected and reviewed the fourth-quarter ethics reports from all ethics supervisors before preparing the quarterly summary and report to the Personnel Board.

Appeals and Litigation

Carla W. v. SOA, Office of Children's Services and Edgar W. v. SOA, Office of Children's Services. The Alaska Supreme Court released its decision in these consolidated cases. In an unpublished opinion, the court affirmed the termination of parental rights of a mother and father to their five children. The parents' main argument was that in terminating their parental rights, the trial court erred in considering evidence that had been properly introduced in previous hearings (temporary custody and adjudication hearings) in the same case. The parents argued that according to rules of evidence applicable to Child In Need of Aid (CINA) cases, the previously introduced evidence constitutes hearsay that the trial court may only consider if the witness is no longer available to testify. The supreme court did not analyze the case under the hearsay rule but instead noted that (a) the trial court's decision was adequately supported by evidence introduced at the termination trial, and (b) the trial court did not appear to have actually reviewed much, if any, of the challenged evidence. However, the court buttressed its decision by noting that CINA cases are often handled start-to-finish by a single judge. The court stated that it would not be error for a newly assigned judge to review all of the earlier proceedings in a CINA case, since doing so would "merely . . . put him in the position that most judges in termination cases presumptively occupy." The court also explicitly affirmed its holding in *D.M. v. SOA, DFYS*, 995 P.2d 205 (Alaska 2000), that at termination a trial court may rely upon evidence previously introduced at an adjudication hearing. The court rejected the parents' argument that *D.M.* had been superseded by amendments to CINA Rule 18. The Court stated that "CINA Rule 18 does not prohibit trial courts from relying on earlier testimony as long as that testimony was properly admitted and has not been impeached or supplemented."

In addition to the evidentiary question, the court rejected on factual grounds the parents' argument

that they had adequately remedied the conduct or conditions that caused their children to be in need of aid, and it rejected their argument that the trial court's finding – required under the Indian Child Welfare Act – that the children would be seriously harmed if returned to the parents, was not sufficiently supported by expert testimony. AAG Hanna Sebold represented the Office of Children's Services (OCS) at the trial. AAG Mike Hotchkin handled the appeal.

Marcia V. v. SOA, Office of Children's Services. The Alaska Supreme Court issued an opinion this month affirming the trial court's termination of a mother's parental rights in an Indian Child Welfare Act (ICWA) case. The mother had challenged whether the termination met the ICWA standard requiring "evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child by the parent … is likely to result in serious emotional or physical damage to the child." The mother challenged both the qualification of the expert who testified at trial as well as the sufficiency of the evidence presented to support the court's finding.

With regard to the expert's qualifications, the mother argued that there were "glaring deficiencies." The first deficiency she noted was that the expert lacked familiarity with or expertise in Native culture. The court rejected that argument because the basis for termination had nothing to do with Native culture or society but instead was based on evidence of the mother's addictions, violent behavior, incarceration, inability to provide a stable home, neglect, exposure of the child to sex offenders and domestic violence, and abandonment.

The mother next challenged the expert's education and experience as deficient. The expert was an OCS supervising social worker. Because the mother had not objected to the social worker's testimony as an expert at trial, the court reviewed the issue under a plain error standard.

The court noted that ICWA heightens the requirements for an expert's qualifications beyond those normally required to testify as an expert. The court considered the ICWA guidelines and legislative history and noted that under those non-binding authorities, for a social worker to qualify as an expert for ICWA purposes, she would need to be a "professional person having substantial education in the area of his or her specialty" and that that education or training should constitute "expertise beyond the normal social worker qualifications."

The court did not delve deeply into the issue of what level of education and expertise is necessary for a social worker to satisfy ICWA's legal requirements because the mother abandoned the issue at trial and indicated no objection to the social worker testifying as an ICWA expert. The court concluded that because it was possible to infer from the social worker's known qualifications that she possessed the qualifications necessary under ICWA, it was not plain error for the trial court to accept the mother's acquiescence to her testimony.

The mother also made several challenges to the sufficiency of the evidence supporting the trial court's finding, beyond a reasonable doubt, that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. The court quickly disposed of the mother's objection to the finding that leaving her child with known sex offenders presented a risk of harm to her child. And the court rejected the mother's argument that the fact that therapy helped her daughter overcome her emotional difficulties had any bearing on the trial court's findings that the mother's conduct put her daughter at risk.

The court also rejected the mother's challenge that the expert testimony was weakened by her failure to interview either the mother or daughter. The court distinguished this case from those where over-reliance on documents fatally weakened the expert's testimony. The court confirmed that in this case, the expert's testimony

was grounded in the particulars of the case and that the expert had not missed key facts about the mother's progress.

The mother had also argued that the expert's failure to parrot the language of §1912(f) of ICWA was a deficiency in the state's case. The court dismissed that challenge, noting that §1912(f) provides the standards for the court's findings based on all the evidence presented and that the expert testimony need not be the sole basis for the findings.

Finally the court confirmed that substantial evidence supported the trial court's findings under §1912(f) that returning the child to the mother was likely to cause serious emotional or physical damage to the child, particularly in light of the undisputed facts relating to the mother's alcoholism, neglect, repeated incarcerations, and failure to comply with her case plans. AAG Laura Bottger represented OCS on appeal.

R.L. v. SOA, Office of Children's Services. OCS filed its brief in this ICWA case where a father whose parental rights had been terminated challenged the trial court's finding that the state had made active efforts to provide remedial services designed to prevent the breakup of the Indian family. For a couple months while the father was incarcerated, OCS did not make active efforts to provide services to him. But early in the case, the father chose not to cooperate with OCS, failing to participate in the development of a case plan, failing to show up for scheduled visits with his child, and absconding for approximately ten months to avoid arrest for a probation violation. During this period, OCS's ability to provide reunification services for the father was severely hindered because of his conduct. Only after he was jailed again did he become willing to work a case plan. By then his daughter was a year and a half old and a stranger to him. OCS argued that, considering the entire case and the totality of the circumstances, the trial court did not err in finding that OCS made the required active efforts to prevent the breakup of the Indian family and that those efforts were unsuccessful. AAG Laura Bottger represents OCS on appeal.

Sowinski v. Walker. Three teenagers were involved in an accident in June 1996 while riding an ATV over an access road located at mile 1.8 of the Knik River Road, several miles outside Palmer. The accident occurred when the riders struck a cable that had been strung across the access road. Two of the teenagers died of their injuries and one survived. The estates and family members of the deceased teenagers brought negligence claims against numerous parties, including the State of Alaska. The viability of the claims against the state depended on the state's duty to remove the cable.

The Alaska Supreme Court held that the state did not have a duty to remove the cable. It held that the state's reference to the access road as a "public road" in a settlement agreement with the owner of condemned property did not support a state intent to maintain the road for the safety of the public. Therefore the state did not have a contractual duty to remove the cable.

The state also did not have a duty in tort to remove the cable, under any of the theories argued by the appellants:

The fact that the state thought it had a 100 feet right-of-way on a perpendicular highway, which would encompass the part of the access road with the cable, did not create a duty to maintain the access road for 100 feet, given that the actual right-of-way was only 50 feet.
The fact that the state maintained the gravel connection between the perpendicular highway and the access road did not obligate the state to maintain the entire access road.

The facts that the state used the term "public road" in the condemnation settlement and that it used maps showing a 100 feet right-of-way did not estop the state from arguing that it had no duty to maintain the access road, since it had

never publicly stated that it had a duty to maintain the road.

The fact that a trooper knew of the cable did not create a state duty. The trooper had responded years earlier to a call from the man who had strung the cable across the access road. The man put up the cable after he had building materials stolen from his property when vehicles entered his land the road, which he used as a driveway. He later found the cable broken and bits of scattered car lights on the ground. A trooper came to the property, viewed the broken car lights, and did not remove the cable. The supreme court found that although the state could have removed the cable, it was not morally culpable for failing to remove a hazard on non-state property. It found that the costs to the community of imposing this burden on the state are high, as it would require the state to enter non-state property and dictate the use of that property to non-state actors.

Section Chief Joanne Grace handled this appeal.

Gary K. v. State, Office of Children's Services. The Alaska Supreme Court affirmed the termination of a father's parental rights to his small daughter. The father's main argument was that the trial court erred in finding that he had abandoned his child. The father had failed to establish paternity until his daughter was two years old and expressed a desire to parent the child only after he knew for certain that he was her father. Relying on *Jeff A.C., Jr. v. State*, 117 P.3d 697, the court found that even if the father did not know with absolute certainty that he had fathered the child, he knew of the child and he knew that he might be her father. He made no effort to determine paternity and in fact took several months to take a paternity test once OCS found him and encouraged him to do so. Therefore, the supreme court concluded that the father willfully disregarded his parental duties during the first two years of his daughter's life.

The supreme court also affirmed the trial court's findings that the father's conduct had destroyed the parent-child relationship, based on his failure to make contact in the first two years of the child's life; that he had failed to remedy the abandonment, since his change of heart came too late for him to bond with his daughter during the critical early phase of her life; and that the state made active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family. The court also affirmed the superior court's finding that granting custody to the father would likely result in serious emotional or physical damage to the girl.

AAG Poke Haffner handled the trial. Section Chief Joanne Grace handled the appeal.

Public Records Requests

During January, AAG David Jones continued to assist the Governor's Office in responding to numerous public records requests. Many of the requests seek copies of e-mail messages. The gathering and reviewing e-mail has proven to be especially challenging and time-consuming.

Regulatory Affairs and Public Advocacy (RAPA)

Pleadings Filed

U-08-138, CEA interconnection standards. The Regulatory Commission of Alaska (RCA) suspended a tariff filing by Chugach Electric Association (CEA) that proposes certain criteria and standards to govern its interconnection with non-utility power generation facilities seeking to sell power to the utility. CEA proposes to unilaterally require formal, federal certification of the non-utility's Qualifying Facility (QF) status, as opposed to self-certification, before it is required to negotiate a power purchase agreement. The RCA required all parties to file written statements of position on the CEA proposal, including responses to seven specific questions posed by the commission.

On January 15, the Attorney General/RAPA filed its responsive pleading. RAPA's statement of position and comments stated that (1) as a matter of law, questions of QF status are solely within the jurisdiction of the Federal Energy Regulatory Commission (FERC); (2) even if a type of concurrent jurisdiction was desirable, the proposed tariff language is contrary to existing RCA regulations and precedent regarding self-certification; and (3) the proposed tariff as written does not provide adequate protection or assurances of a fair process to potential self-certified QFs. Further, the filed statement suggested that it might be appropriate for CEA to implement a tariff provision allowing it to charge a self-certified QF the actual, incremental costs CEA incurs in a *successful* challenge to a producer's QF status. If an evidentiary hearing proves necessary, it is scheduled to begin February 9.

U-07-78, Goat Lake Hydro power sales rate. Goat Lake Hydro, Inc. (GLH) is a wholesale producer of hydroelectric power near Skagway that sells all of its power to its regulated affiliate, Alaska Power Co. GLH filed a proposed kWh rate increase to 'true-up' its rate stabilization account. Parties pre-filed their direct testimony according to schedule and an adjudicatory hearing was conducted on November 14, 2008. On January 14, the RCA issued an electronic order requiring filing of additional testimony in response to particular written questions posed by the commission in that order.

On January 16, the Attorney General/RAPA filed an objection and comments in response to the commission's order. Citing RCA regulations, commission precedent, and procedural due process concerns, RAPA objected to the filing of additional evidence at this stage of the proceeding, particularly when there is not an opportunity to test that evidence through discovery and cross-examination. Also, the RCA's regulations only provide for consideration of 'additional evidence' before issuance of a final order where there are changed facts or circumstances. RAPA maintained that the questions posed by the RCA do not solicit evidence of any changes occurring since the conclusion of the adjudicatory hearing. Consequently, RAPA asked the RCA to vacate its order and refrain from considering the utility's responsive submission as evidence for adjudication.

New Cases

U-08-157 & U-08-158, AWWU rate cases. On November 14, 2008, the Anchorage Water and Wastewater Utilities (AWWU) requested rate increases of 7 percent for water services and 6.5 percent for sewer services. Responding to an RCA invitation, the Attorney General/RAPA filed a notice of election to participate in the dockets on December 30. Preliminary review of the utility filings suggests that scrutiny is required of the proposed plant-in-service adjustments, the proposed cost of debt and cost of capital, and the proposed amounts of plant reserved for future use. A January 21 pre-hearing conference scheduled filing of RAPA direct testimony for July and an adjudicatory hearing in September 2009.

Meanwhile, RAPA is examining whether to request RCA consolidation of AWWU's U-08-136 petition (to remove the current restriction on the utility's ability to issue dividend payments to the Municipality of Anchorage) with these two rate cases for comprehensive review.

Torts and Workers' Compensation

The section obtained a number of recoveries in claims arising out of workers' compensation matters where state employees were injured by third parties in auto accidents or other accidents while working.

In one matter, the employee pursued civil damages from the third party driver's liability insurer. The state's lien for compensation already paid to the injured state employee was over $350,000. In a negotiated agreement, the state

will receive $200,000 from the insurer (after paying its share of attorney fees). In another matter, a state employee was injured in a hotel elevator on a work trip in California. The employer provided workers' compensation benefits and the employee also pursued a civil claim in California against the hotel, the elevator company, and an insurer. The state agreed to compromise a portion of its workers' compensation lien for closure of the workers' compensation claim. However, the employee ultimately failed to execute a compromise and release agreement with the state. The state petitioned the Alaska Workers' Compensation Board for relief. The board granted the petition, resulting in an award of approximately $13,000 to the state to help reimburse the state for its workers' compensation payments. In another matter, a state employee injured in an auto accident settled her third party claim for around $85,000. The state compromised approximately half of its lien for full closure of the employee's workers' compensation claim, resulting in a recovery of $16,000. In another matter involving a state employee injured in an on-the-job auto accident, the state recovered the total amount of its lien – approximately $4,500 – from the third party insurer. AAG Chris Beltzer handled these cases.

In a wrongful death case arising out of a drowning in Kodiak, the superior court dismissed plaintiffs' claims against the state defendants for loss of sibling consortium in a wrongful death case. The court relied on the recent Alaska Supreme Court decision in *Sowinski v. Walker* which held that the Alaska Wrongful Death Statute unambiguously bars nondependent siblings from recovering non-pecuniary damages such as loss of consortium. AAG Jon Woodman is handling the case.

The state filed a petition for review with the Alaska Supreme Court on behalf of an Office of Children's Services (OCS) social worker who was denied summary judgment after the superior court took judicial notice of the contents of an underlying child-in-need-of-aid (CINA) court record in a separate civil proceeding. The civil case for damages arose after the state unsuccessfully sought to terminate the plaintiff's parental rights. The mother then filed a number of tort claims against OCS and an OCS social worker, relating to their alleged malicious and bad faith conduct in the CINA proceeding. This is the third petition filed in this case. After the superior court issued an order listing forty-seven findings from the CINA court's factual findings that the social worker was collaterally estopped from re-litigating, the social worker requested and was granted interlocutory review. In a 2007 decision, the Alaska Supreme Court reversed, holding that the OCS social worker was not precluded from challenging the CINA facts in her civil case and was not collaterally stopped from re-litigating the facts because she had not agreed to be bound by the CINA court's determinations, was not represented by nor in privity with a party to the CINA case, and did not have control over the litigation or the ability to pursue her personal interests.

Upon remand, the social worker moved for and was denied summary judgment. In denying the motion, the superior court relied largely on the CINA court findings to conclude that a genuine issue of fact existed regarding the social worker's alleged bad faith. The court noted that while it could not treat the CINA findings as binding, "the substantial trial record and factual findings of [the CINA case] . . . provide[d] the court with a source from which it can determine the existence of an actual controversy."

The new petition asks the court to consider whether and to what extent the contents of court records can properly be the subject of judicial notice. The petition asserts that allegations and disputed conclusions contained in court records, like the CINA findings that the court used in the tort case, do not meet the high reliability threshold required to be subject to judicial notice principles under Evidence Rule 201. The social worker contends that, by taking judicial notice of facts and statements that are not judicially noticeable under Alaska law, the court's order

undermined the Alaska Supreme Court's 2007 decision in *State, Dep't of Health & Social Services v. Doherty*, which held that the CINA factual findings were not binding against the social worker. The petition also maintains that the superior court improperly considered inadmissible evidence and ignored evidentiary and procedural mechanisms courts must follow when considering summary judgment matters under Civil Rule 56. AAG Janell Hafner wrote the petition. AAG Gene Gustafson is defending the underlying case.

Transportation

Rural Airport Fee Relief

Last summer, the Department of Transportation and Public Facilities (DOTPF) issued emergency regulations halting fee increases at rural airports. With assistance from AAG Jeff Stark, DOTPF has now finalized regulations instituting more modest fee increases for users of rural airport property.

CRIMINAL DIVISION

Anchorage DAO

Anchorage and Dillingham conducted seven trials and 56 grand juries this month.

The offices had several defendants plead during jury selection. In one notable example, ADA Brittany Dunlop piled up the evidence from eight residential burglaries in preparation for her opening statement about a 22-year-old recidivist burglar. He pled and agreed to serve 10 years.

ADA Paul Miovas tried Roger Copeland for sexually abusing his son's girlfriend. The defendant took the stand and alleged that his DNA was transferred to the victim's body when she got angry at him, grabbed his hand and shoved it into her pants. The problem was Copeland spoke at length with police and forgot to tell them about the hand shoving incident.

ADA Aaron Sperbeck tried Radenko Jovanov for sexually assaulting and abusing a friend of his daughter's during a sleepover. At the beginning of trial the defendant pled to sexual abuse of a minor in the second degree and argued that there was no "position of authority" or coercion of the sexual encounter. Sentencing is set for March.

ADA Brett Watts won an unusual domestic violence protective order violation trial. A pro se defendant, Larry Mikawa, suffering from schizophrenia, repeatedly violated his ex-girlfriend's protective order. He told the jury he did it as part of his business, Mikaninja. The judge sentenced Mikawa to 310 days in jail for the class A misdemeanor and a misdemeanor petition to revoke probation.

ADA John Skidmore tried Roger Sizemore for attempted murder. Sizemore got angry when another resident of a low-budget rooming house said something unintelligible while reclining on a sofa. Sizemore, who was having a bad day, plunged a knife into the man's neck, severing the victim's carotid artery. An EMT physically stopped the blood loss by pinching the victim's neck and artery. The victim survived, but could not attend the trial because he was fishing in the Bering Sea. He had been out of work for a year trying to rehabilitate and waiting for trial.

In a sentencing of note, ADA Gustaf Olson argued that Mark Talbert was a dangerous man when he held a former co-worker hostage inside the beauty parlor where both had worked. At sentencing Talbert argued that he was suicidal and never really intended the woman harm. Judge Pat McKay sentenced the first offender to 25 years with 13 suspended.

The award for the most persistent prosecutor goes to ADA John Novak. He tried John Carr for failing to appear at a sentencing in 1991. Carr was picked up in 2006 after fleeing mid-trial from a trial in which he was eventually convicted

of third degree assault. Carr was extradited to Alaska, tried for the felony failure to appear and, in January 2009, sentenced to four years – two on the felony assault and two on the failure to appear.

Fairbanks DAO

DUI prosecutions continue to be a focus of the Fairbanks office.

During January the offices received four more convictions for felony DUI, including that of a 50-year-old Fairbanks man whose only prior criminal convictions were the two predicate misdemeanor DUIs. He was sentenced to three years in prison with two years suspended and was placed on probation for three years. In addition to having to pay a $10,000 fine and having his license suspended for life, he forfeited the car he was driving when he committed the offense.

The offices also indicted four new felony DUIs during the month, including two against defendants alleged to have committed their second felony DUIs. By normal Fairbanks standards, four felony DUI indictments in one month is a low total. For 2008 the Fairbanks office averaged seven felony DUIs per month (85 for the year).

For the past two or three months, Fairbanks had a spate of mail thefts and related check and credit card frauds. One of the principals was caught almost red-handed when a Fairbanks Police Department detective was talking on the phone to a Fred Meyer Stores loss prevention specialist in Portland, Oregon. They were discussing unrelated matters when the loss prevention specialist got a call from the Fairbanks Fred Meyer store about a man at the customer service counter trying to cash a check that appeared to have been altered. The loss prevention specialist gave the Fairbanks detective the purported name of the person attempting to cash the check and that name matched the name associated with other recent check frauds. The loss prevention specialist had a real-time video feed from the Fairbanks store and gave the Fairbanks detective a description of the man standing at the customer service window. The detective then relayed this information to a Fairbanks police officer who was dispatched to the store location.

The defendant, after sensing something was wrong because of the length of time it was taking to process the check, was caught as he was leaving the store. He left the altered check and his identification at the customer service window. Rather unbelievably, he had altered the check to be payable to him under his real name, and had used his real Alaska Driver's License as his ID when attempting to cash it. He was indicted for one count of attempted felony theft (he never got the money) and three counts of felony forgery (one for altering the check, one for possessing a known forged check, and one for uttering a known forged check). The defendant remains in custody pending an early March trial date.

Army investigators at Fort Wainwright received a tip that a civilian who drove the YMCA free ride van on post was selling prescription drugs to soldiers from the van. Because the driver was a civilian, the Army Criminal Investigation Division Unit referred the case to the state for investigation and prosecution. During the investigation an undercover policeman posing as a soldier was able to purchase multiple schedule one controlled substances from this erstwhile good humor driver, including some transactions that were audio-taped pursuant to a state search warrant. When busted after the last sale to the undercover officer, the defendant had 200-odd narcotic pills of various descriptions and a significant amount of cash. In a post-Miranda interview the defendant informed his arresting officers that he had merely given these pain killers to soldiers who needed them (which would be no less of a crime) but had required the undercover narcotics officer to pay for them because he "made him from day one," "knew it was an officer" and thought an officer "shouldn't be getting them for free."

After litigating whether two prior felony convictions out of Virginia counted under Alaska's presumptive sentencing guidelines (the court ruled that they did) the defendant knew he was looking squarely at a presumptive sentencing range of 15-20 years on his most serious charge (a class A felony misconduct involving a controlled substance) if convicted at trial. On the morning of trial the defendant decided to plead guilty to a consolidated class A felony misconduct involving a controlled substances count in return for the state's offer of a 15-year flat-time sentence. Recognition should go to the Fort Wainwright Army Criminal Investigation Division Unit who did a very good job investigating and processing this case.

Juneau DAO

During the past two months, the Juneau DAO has been inundated with sex crimes.

During December, a Juneau man was indicted for seven counts of sexual assault, seven counts of sexual assault against a minor in the second degree, kidnapping, witness tampering and assault in the second degree for an assault on a 15-year-old girl allegedly abducted from near a middle school.

A Haines man was indicted for 29 counts of sexual assault against a minor in the first degree for conduct against his stepdaughter that allegedly began when she was in first grade and continued through ninth grade.

An Angoon man was indicted for 15 counts of sexual assault of a minor in the first degree for assaults occurring in Angoon from 1988 through 1989. ADA Julie Willoughby is assigned to this case.

Kenai DAO

Wes Shandy was sentenced to 19 years after being convicted at trial of manslaughter and felony DUI. ADA Jean Seaton was the trial prosecutor for this case in Homer.

ADA Seaton also traveled to Seward where two co-defendants were convicted in a precursor methamphetamine manufacture A-felony.

During the month ADA Kelly Lawson traveled to Homer and ADA Gary Poorman traveled to Seward for district court trial weeks.

The grand jury indictments this month included attempted murder, burglary one and two, domestic violence assault, vehicle thefts, DUIs, and a crime spree involving two separate armed robberies, stolen vehicles and more.

During one of the robberies, a cocked gun was pointed at a pregnant woman's belly, followed by a high-speed car chase, a rolled pickup truck and another chase in another stolen vehicle. The robbers were ultimately found thanks to On-Star. The robbers cut the battery line in an effort to thwart the location device but forgot that the stolen truck was a diesel and had two batteries. ADA Scot Leaders is prosecuting this case.

ADA Devoron Hill continues to handle a large portion of Kenai misdemeanors.

The new courtrooms at the Kenai courthouse have opened, providing each superior court judge with a separate courtroom.

Kodiak DAO

Kodiak in mid-winter is usually calm, but business remained steady as the offices worked their way through a mass of cases set over from December to accommodate witnesses' and counsels' holiday leave schedules. Also, the office's attorneys have attended more delinquency proceedings in court during the month. There is no explanation for the recent increase of juvenile delinquency activity.

A Kodiak probationer was indicted for tampering with physical evidence when he brought a

"whizzinator" to a urine test. The offending implement was discovered during a search conducted after his tendered sample was presented to the probation officer and found to be cold.

Another probationer, who was indicted last year on three occasions for vehicle theft, was indicted for burglary and theft after he was identified as a suspect in a break-in over the New Year's holiday at a local chiropractic clinic.

A Kodiak man was indicted for felony assault. The man's adult son reported that the defendant threatened him with a gun during an argument.

Palmer DAO

A jury convicted Thomas Beattie of DUI and driving while license revoked and acquitted him of resisting arrest. The case was based on circumstantial evidence. His truck was stuck in someone's yard. Troopers found Beattie at his home, drunk. He claimed he had been drinking at home for hours and that a friend borrowed his truck. Beattie has six prior DUI convictions, including two convictions for felony DUI and one for felony refusal. ADA Rick Allen was the trial prosecutor.

A Palmer jury convicted Tyler Gardino of assault in the third degree, misconduct involving weapons in the fourth degree, and misconduct involving weapons in the fifth degree. Gardino entered the Del Rois Bar carrying a concealed, loaded 9mm handgun. When he put his arms around a married woman, several people threatened him with bodily harm. Instead of leaving, Gardino pulled out his gun, racked a round and pointed the gun to the chest of one of the bar patrons. People in the bar swarmed Gardino, disarmed him, and detained him by duct taping his hands and feet until troopers arrived. ADA Trina Sears was the trial prosecutor.

Nicolai Bultron was convicted after a jury trial of felony eluding, resisting arrest, driving while license suspended and reckless driving. ADA Paul Roetman prosecuted this case.

Allen Theodore was convicted after a jury trial of felony DUI, felony refusal of a breath test and misconduct involving weapons in the fourth degree. The trial prosecutor was ADA Kerry Corliss.

ADA Shawn Traini prosecuted the following Cordova cases:

Sheldon Fox was indicted on a charge of attempted murder of the Cordova police chief and three counts of assault in the third degree. Fox was suicidal and barricaded himself in a cabin. Police responded and Fox randomly pointed his loaded gun at officers. During the standoff he fired a shot at the police chief, who returned fire. Police were eventually able to subdue Fox without any injuries.

In another case, Stuart Boyles was indicted for furnishing alcohol to a minor (a repeat offense). Boyles had been providing alcohol to his girlfriend who had recently been in alcohol counseling.

Talkeetna resident John Adams was indicted on multiple counts of possession and distribution of child pornography. Adams, a registered sex offender from a 2001 federal conviction for possession of child pornography, had over 3,000 images on his computer and nearly 100 videos containing child pornography. Adams came to the attention of the Alaska State Troopers after he sent pornographic images to a 13-year-old girl in California, along with a photo of himself. The girl's mother found him on the sex offender registry and notified the Alaska State Troopers. The prosecutor was ADA Rachel Gernat.

ADA Gernat's article entitled *"Avoiding the Pitfalls of Prosecuting Internet Crimes Against Children"* was recently published in the book *"Strategies for Prosecuting Internet Pornography Cases"* (Aspatore Books).

SAVE THE DATE

NAAG Spring Meeting - Washington, DC March 2-4